

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
May 19, 2015

v

DEVONTE LAMAR KITCHEN,

Defendant-Appellant.

No. 320996
Wayne Circuit Court
LC No. 13-007497-FH

Before: HOEKSTRA, P.J., and SAWYER and BORRELLO, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction for unarmed robbery, MCL 750.530. The trial court sentenced defendant to 2 to 15 years' imprisonment. Because the evidence was sufficient to support defendant's conviction, we affirm.

On July 26, 2013, Edward Jean, a loss prevention officer monitoring a Wal-Mart store through the store's closed circuit television system, observed defendant open the packaging of an OtterBox cellular telephone case, remove the merchandise from the packaging, and conceal the telephone case in his pocket. Defendant then attempted to leave the store, passing all points of purchase without paying for the item. At that time, three loss prevention officers, including Jean, approached defendant and an approximately 10 minute exchange ensued. During this exchange, at Jean's request, defendant returned the merchandise to the officers. Jean then asked defendant to accompany them to the loss prevention office. Jean "put his hand on" defendant's chest in order to get defendant to go to the office. In response, defendant grabbed Jean by both shoulders, told Jean "I'm strong too," and pushed Jean. Defendant then left the store and drove away in a car. Police apprehended defendant nearby. Defendant's concealment of the merchandise as well as his confrontation with Jean were recorded on video and played at trial. Following a bench trial, defendant was convicted of unarmed robbery and sentenced as noted above. Defendant now appeals as of right.

On appeal, defendant argues that there was insufficient evidence to support his conviction for unarmed robbery because the prosecution did not establish that force was used "in the course of committing a larceny." In particular, defendant contends that, because he pushed Jean after the completion of the taking, the push was a separate incident from the larceny and in fact an act of self-defense against Jean's assault and battery upon defendant. We disagree.

This Court reviews challenges to the sufficiency of evidence de novo following a bench trial. *People v Lanzo Const Co*, 272 Mich App 470, 473; 726 NW2d 746 (2006). We examine the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found every essential element proved beyond a reasonable doubt. *Id.*; *People v Mitchell*, 301 Mich App 282, 289-290; 835 NW2d 615 (2013). All conflicts in the evidence are resolved in the prosecution's favor, and this Court not interfere with the trier of fact's determinations regarding the weight of the evidence and the credibility of the witnesses. *People v Unger*, 278 Mich App 210, 222; 749 NW2d 272 (2008).

The unarmed robbery statute, MCL 750.530, states:

(1) A person who, in the course of committing a larceny of any money or other property that may be the subject of larceny, uses force or violence against any person who is present, or who assaults or puts the person in fear, is guilty of a felony punishable by imprisonment for not more than 15 years.

(2) As used in this section, "in the course of committing a larceny" includes acts that occur in an attempt to commit the larceny, or during commission of the larceny, or in flight or attempted flight after the commission of the larceny, or in an attempt to retain possession of the property.

Under this statute, to obtain a conviction for unarmed robbery, the prosecution must establish the following elements beyond a reasonable doubt: (1) that defendant has feloniously taken the property of another; (2) by force, violence, assault, or putting in fear; and (3) that defendant was unarmed. *People v Haverson*, 291 Mich App 171, 177; 804 NW2d 757 (2010). Notably, as evident from the statute's plain language, unarmed robbery is a transactional offense, meaning that a robbery conviction may stand "even where a defendant uses force for the first time after completing a taking." *People v Smith-Anthony*, 494 Mich 669, 686; 837 NW2d 415 (2013). Thus, for example, when an unarmed defendant uses force while "in flight or attempted flight after the commission of the larceny," he or she is guilty of unarmed robbery. MCL 750.530(2); *People v Passage*, 277 Mich App 175, 178; 743 NW2d 746 (2007). For purposes of unarmed robbery, "force" refers to "nothing more than the exertion of strength and physical power." *Passage*, 277 Mich App at 178.

In this case, there is no dispute that defendant took a cellular telephone case, without paying for it, and that he was unarmed at the time he stole the item, establishing beyond a reasonable doubt the felonious taking of another's property while unarmed. Following this conduct, the loss prevention officers confronted defendant about the theft as he attempted to exit the store. When Jean placed his hands on defendant to escort defendant to the loss prevention office, defendant pushed Jean. Having pushed the officer, defendant then left the store and drove away. Viewed in a light most favorable to the prosecution, the evidence clearly demonstrates that defendant exerted force against Jean in order to avoid going to the loss prevention office and to enable his flight from the store after the commission of a larceny. Cf. *id.* (holding that the defendant's struggle with store's loss-prevention officers when confronted about theft was sufficient to establish use of force during flight, or attempted flight, under MCL 750.530). Consequently, the evidence was sufficient to support defendant's conviction for unarmed robbery under MCL 750.530.

Affirmed.

/s/ Joel P. Hoekstra
/s/ David H. Sawyer
/s/ Stephen L. Borrello